

13 SALES AND USE TAX EXEMPTION

This information was developed in cooperation with the Idaho State Tax Commission and is intended as a basic overview of tax exemption status for state agencies and political subdivisions. For more detailed information or questions please contact the Tax Commission, Legal/Tax Policy directly at 208-334-7530.

13.1 Is the government exempt from paying sales and use tax?

The State, its departments, agencies and all of its political subdivisions are exempt from Idaho sales and use tax. Political subdivisions include counties, municipalities, towns, villages, school districts and cemetery districts, to name a few.

13.2 How are purchases made without paying tax? Is there a tax exemption number?

There are no “tax exemption numbers”. Tax exempt entities must provide merchants with a completed Sales Tax Resale or Exemption Certificate (ST-101). Merchants are required to keep a copy of this form in their records to verify the tax exempt status of the government entity. Once this form is on file with the merchant, it covers all of a customer’s future exempt purchases. In addition to filling out the buyer and seller information in the boxes on the top of this form, the buyer must check mark the “Idaho Government Entity” box in Paragraph 3, Exempt Buyers. Finally, the buyer must sign, indicate a title and date the form at the bottom.

13.3 Purchases from companies outside of the State where product is delivered to Idaho (e.g., phone, catalog, and Internet sales).

Purchases made by a government entity from a vendor outside of the state, but where the product is delivered by the vendor or common carrier (e.g., postal service, UPS) to a point within the state is tax exempt. If the out-of-state vendor is registered to collect Idaho state sales tax, the government entity buyer must provide a valid, completed ST-101 to the vendor.

Note: Under no circumstances should any buyer pay the sales tax of another state when the product is delivered to a point within Idaho by the out-of-state vendor, or common carrier.

13.4 Purchases made outside of the State where delivery is taken out of the state

If items are purchased in another state and possession is taken in that state, the tax laws of that state determine what tax, if any, is owed. For example, Oregon and Montana have no sales tax, but Washington State allows no tax exemption for any state's agencies, including their own.

13.5 Items used outside of the State

Items taken out of Idaho by government agencies or its contractors and used in other states are subject to the laws of those states and may be taxable.

13.6 Items bought by contractors for work to be performed for government agencies

A prime or sub-contractor has no right to an immunity from taxes simply because it is performing a service for a government agency and the product of that service, such as the building or repair of real estate, will become the property of the State. The contractor must pay a sales tax to the vendor upon purchase of items or a use tax to the state thereafter if it purchases items ex-tax.

13.7 Items provided by State agencies to contractors for use in real property improvements

Since a prime or sub-contractor has no right to an immunity from taxes simply because it is performing a service for a government agency, the use of untaxed materials received from the government and incorporated into real property by the contractor is subject to a use tax by the contractor, payable directly to the state.

13.8 Special Circumstances---Cash Purchases by Government Agencies

Each time a tax-exempt cash purchase is made by a state government agency buyer, a form ST-104G must be filled out for the vendor. The instructions as well as the limitations for the form's use are printed on the form. Note that the purchasing agent as well as the buyer must sign the form.

13.9 Special Circumstances---Sales Tax Exemption on Certain Lodging Accommodations

Only those lodging accommodations for government employees on official government business, where the government will directly pay the credit card used, qualify for the tax exemption. Cash payments, payments with personal

credit cards, and payments with agency-issued credit cards paid by the traveler and later reimbursed by the government do not qualify for the tax exemption.

13.10 Idaho Standard Terms and Conditions

Standard Idaho Terms and Conditions are applicable to every bid issued by the state. Regarding taxes, they read, in part:

9. TAXES: The state of Idaho is generally exempt from payment of state sales and use taxes and from personal property tax for property purchased for its use. The State is generally exempt from payment of federal excise tax under a permanent authority from the District Director of the Internal Revenue Service (Chapter 32 Internal Revenue Code [No. 82-73-0019K]). Exemption certificates will be furnished as required upon written request by the Contractor. If the Contractor is required to pay any taxes incurred as a result of doing business with the state of Idaho, it shall be solely and absolutely responsible for the payment of those taxes. If, after the effective date of this Contract, an Idaho political subdivision assesses, or attempts to assess, personal property taxes not applicable or in existence at the time this Contract becomes effective, the state of Idaho will be responsible for such personal property taxes, after reasonable time to appeal. In no event shall the state of Idaho be responsible for personal property taxes affecting items subject to this Contract at the time it becomes effective.

13.11 Tax Commission Administrative Rules

IDAHO ADMINISTRATIVE CODE IDAPA 35.01.02 - Idaho Sales and Use Idaho State Tax Commission Tax Administrative Rules

094. EXEMPTIONS ON PURCHASES BY POLITICAL SUBDIVISIONS, SALES BY THE STATE OF IDAHO, ITS DEPARTMENTS, INSTITUTIONS, AND ALL OTHER POLITICAL SUBDIVISIONS (Rule 094).

01. In General. This rule governs application of the sales and use tax to governmental instrumentalities. As used herein, the term governmental instrumentalities means the state of Idaho, its agencies, departments or institutions and all political subdivisions of the state of Idaho; but does not include other states, their agencies, departments, or institutions and political subdivisions. (7-1-93)

02. Extent Of Exemptions. The state and all its agencies, departments and institutions are exempt from the sales and use tax. This exemption does not extend to corporations, the stock of which is owned in whole or in part by the state, nor does it extend to private agencies to which the state contributes funds. The exemption only applies in the case of purchases made directly by the state, its agencies, departments, and institutions. (7-1-93)

03. Political Subdivisions. Political subdivisions of this state are also exempt from payment of the sales and use tax. A political subdivision is a governmental organization which embraces a certain territory organized for public advantage and not in the interest of private individuals or classes to which has been delegated certain functions of state government. In addition to this, a political subdivision has the power to levy taxes. Included within the definition of political subdivisions would be all counties, municipalities, townships, towns and villages, public school districts, cemetery maintenance districts, fire protection districts, local improvement districts and irrigation districts. Canal companies and ditch companies do not come within the scope of this exemption. (7-1-93)

04. Purchases By Contractors. Contractors are consumers under Idaho tax law. Purchases made by contractors are subject to tax even though they are to be applied to use on a state or political subdivision construction project. (7-1-93)

05. Sales By Political Subdivisions. Sales by the state, its departments or institutions, counties, cities, school districts or any political subdivision are subject to sales tax which is to be collected by the political subdivision. If taxable sales are made, a permit is required. This permit is to be obtained by each sales outlet or by the office at which regular and current sales records are maintained. Examples of taxable sales are all sales of tangible personal property, admission charges, fees to use recreational facilities, recreational program fees, copies of documents for which a fee is not set by Idaho Code and garbage service when receptacles or dumpsters are provided by the service and part of the fee represents rental of the receptacle. (7-1-93)

a. Taxable sales. Taxable sales of tangible personal property will include sales of: code books; books sold by library, book fairs, etc.; maps; crime prevention signs; calendars; cafeteria sales to employees or the public; office supplies or any sale to employees; concession stands; trees, shrubs, or bedding plants; items sold to prisoners, such as cigarettes, candy, pop, etc., through vending machines (tax is to be computed on one hundred seventeen percent (117%) of acquisition cost if the machine is operated by the political subdivision); chemicals for noxious weeds; unclaimed property; chemicals for pest control; surplus property-assets; gravel, culverts, or pipe; uniforms to employees; equipment rentals with no operator; grave markers; rental of other property, golf carts, swimsuits; and nonresident or resident library cards. See ISTC Rule 058. (7-1-93)

b. Admission charges. Taxable admission charges will include those fees for using golf courses and swimming pools, for attending athletic events, concerts, fireworks displays, fund raising events and admission to zoos or museums operated by any political subdivision. (7-1-93)

c. Use of facilities for recreation. Taxable use of facilities for a recreational purpose will include receipts from the use of park structures, picnic tables, fair

grounds, rodeo grounds, gymnasiums, ball parks, snowmobile areas and campground areas. Exception: If an individual or organization rents or leases one of these facilities and charges admission to each person using the facility, tax will not be required on its rental or lease of the facility. However, the individual or organization will be required to register and apply for a seller's permit number, under which the tax on the admission will be reported and paid. See ISTC Rule 030. (7-1-93)

d. Recreation program fees. Fees to participate in recreational programs are taxable. Some examples of these programs are city recreational programs in softball, baseball, basketball and football. If instruction is included in such activities as tennis, golf or swimming, the tax will not be due on the separately stated instructional portion of the total fee. If not separately stated, the entire fee is taxable. (7-1-93)

e. Garbage service. Garbage service is taxable on that portion of the total charge which is the rental of the receptacle such as a dumpster. If the statement for service includes the rental of the dumpster or other receptacle but the rental charge is not separately stated, the entire cost of the service is taxable. (7-1-93)

f. The examples cited above are not inclusive. (7-1-93)

06. Federal Government. Sales to and purchases by the federal government and its instrumentalities are not subject to Idaho sales or use taxes except as provided by federal laws or regulations. (7-1-93)

07. Other States. Sales to and purchases by states OTHER than Idaho and their political subdivisions are subject to the tax if delivery occurs in this state. (7-1-93)

13.12 Statutes Pertaining to Tax Exemption

63-3622. EXEMPTIONS -- EXEMPTION AND RESALE CERTIFICATES -- PENALTIES.

(a) To prevent evasion of the sales and use tax, it shall be presumed that all sales are subject to the taxes imposed by the provisions of this chapter and the retailer shall have the burden of establishing the facts giving rise to such exemption unless the purchaser delivers to the retailer, or has on file with the retailer, an exemption or resale certificate.

(b) An exemption certificate shall show the purchaser's name, business name and address (if any), address, and signature and the reason for and nature of the claimed exemption.

(c) A resale certificate shall be signed by and bear the name and address of the purchaser or his agent, shall indicate the number of the permit issued to the

purchaser or that the purchaser is an out-of-state retailer, and shall indicate the general character of the tangible personal property sold or rented by the purchaser in the regular course of business. A resale certificate relieves the seller from the burden of proof only if taken from a person who is engaged in the business of selling or renting tangible personal property and who holds a permit provided for in this section, or who is a retailer not engaged in business in this state, and who, at the time of purchasing the tangible personal property, intends to sell or rent it in the regular course of business or is unable to ascertain at the time of purchase whether the property will be sold or will be used for some other purpose. If a purchaser who gives a resale certificate makes any use of the property other than retention, demonstration or display while holding it for sale or rent in the regular course of business, the use shall be taxable to the purchaser as of the time the property is first used by him, and the sales price of the property to him shall be deemed the measure of the tax.

(d) A seller may accept an exemption or resale certificate from a purchaser prior to the time of sale, at the time of the sale, or at any reasonable time after the sale when necessary to establish the privilege of the exemption. Other than as provided elsewhere in this section, when an exemption or resale certificate, properly executed, is presented to or is on file with the seller, the seller has no duty or obligation to collect sales or use taxes in regard to any sales transaction so documented regardless of whether the purchaser properly or improperly claimed an exemption. A seller so relieved of the obligation to collect tax is also relieved of any liability to the purchaser for failure to collect tax or for making any report or disclosure of information required or permitted under this chapter. A seller need not accept an exemption or resale certificate that is not readable, legible or copyable.

(e) Any person who gives an exemption or resale certificate with the intention of evading payment of the amount of the tax applicable to the transaction is guilty of a misdemeanor and punishable by a fine not exceeding one thousand dollars (\$1,000) or imprisonment for not more than one (1) year, or by both such fine and imprisonment.

(f) An exemption or resale certificate shall be substantially in such form as the state tax commission may prescribe. The claim for the exemption may be a part of the documentation on a sales invoice, purchase order, or other documentation retained by the retailer with regard to the sale. Unless the purchaser has an exemption or resale certificate on file with the seller, the purchaser or his agent must sign the exemption claim, which shall be in addition to any other signature which the seller normally requires on sales invoices, purchase orders, or other sales documentation.

(g) It shall be presumed that sales made to a person who has completed an exemption or resale certificate for the seller's records are not taxable and the seller need not collect sales or use taxes unless the tangible personal property or

services purchased are taxable to the purchaser as a matter of law in the particular instance claimed on the exemption certificate.

63-36220. EXEMPT PRIVATE AND PUBLIC ORGANIZATIONS.

Reads, in part:

(1) There are exempted from the taxes imposed by this chapter:

(a) Sales to or purchases by hospitals, health-related entities, educational institutions, forest protective associations and canal companies which are nonprofit organizations; and

(b) Donations to, sales to, and purchases by the Idaho Foodbank Warehouse, Inc.; and

(c) Donations to, sales to, and purchases by food banks or soup kitchens of food or other tangible personal property used by food banks or soup kitchens in the growing, storage, preparation or service of food, but not including motor vehicles or trailers; and

(d) Sales of clothes to, donations of clothes to, and purchases of clothes by nonsale clothiers; and

(e) Sales to or purchases by centers for independent living; and

(f) Sales to or purchases by the state of Idaho and its agencies and its political subdivisions; and

(g) Sales to or purchases by volunteer fire departments or licensed emergency medical service agencies.

(h) Sales to or purchases by a qualifying senior citizen center.

(2) As used in this section, these words shall have the following meanings:

(j) "Political subdivision" means:

(i) A governmental organization which:

1. Embraces a certain territory,
2. Is organized for public advantage and not in the interest of private individuals or classes,
3. Has been delegated functions of government, and
4. Has the statutory power to levy taxes; or

(ii) A public health district created by section 39-408, Idaho Code; or

(k) "Agency of the state of Idaho" shall mean an office or organization created by the constitution or statutes of this state and constituting a component part of the executive, judicial or legislative branch of the government of this state.

13.13 Forms

Three basic forms are provided with this chapter. Electronic versions may be downloaded from the Idaho State Commission web site at:

<http://www2.state.id.us/tax>

Form ST-101 - Sales Tax Resale or Exemption Certificate

Form ST-104G Sales Tax Exemption Claim for Cash Purchases by
Government Agencies

Form ST-104HM Sales Tax Exemption on Lodging Accommodations
(Government Employees using Credit Card Payment)